



Senate

General Assembly

File No. 806

January Session, 2007

Substitute Senate Bill No. 601

Senate, May 9, 2007

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT MANDATING EMPLOYERS TO PROVIDE PAID SICK LEAVE TO EMPLOYEES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2007*) As used in this section
2 and sections 2 to 6, inclusive, of this act:

3 (1) "Employee" means any person engaged in service to an employer
4 in the business of the employer who is (A) paid on an hourly basis, or
5 (B) not exempt from the minimum wage and overtime compensation
6 requirements of the Fair Labor Standards Act of 1938 and the
7 regulations promulgated thereunder, as from time to time amended;

8 (2) "Employer" means any person, firm, business, educational
9 institution, nonprofit agency, corporation, limited liability company or
10 other entity that employs twenty-five or more persons;

11 (3) "Family violence" has the same meaning as provided in section
12 46b-38a of the general statutes;

13 (4) "Retaliatory personnel action" means any termination,
14 suspension, constructive discharge, demotion, unfavorable
15 reassignment, refusal to promote, disciplinary action or other adverse
16 employment action taken by an employer against an employee;

17 (5) "Sexual assault" means any act that constitutes a violation of
18 section 53a-70, 53a-70a, 53a-70b, 53a-71, 53a-72b or 53a-73a of the
19 general statutes; and

20 (6) "Stalking" means any act that constitutes a violation of section
21 53a-181c, 53a-181d or 53a-181e of the general statutes.

22 Sec. 2. (NEW) (*Effective October 1, 2007*) (a) Each employer shall
23 provide paid sick leave annually to each of such employer's employees
24 in the state. Such paid sick leave shall accrue (1) from the
25 commencement of an employee's employment, (2) at a rate of one hour
26 of paid sick leave for each forty hours worked by an employee, and (3)
27 in one-hour increments.

28 (b) An employee shall be entitled to the use of accrued paid sick
29 leave beginning on the ninetieth day after the employee's first day of
30 employment, unless the employer agrees to an earlier date. Each
31 employee shall be entitled to carry over accrued paid sick leave from
32 one year, whether calendar or fiscal, to succeeding years. Each
33 employee shall be entitled to use a maximum of fifty-two hours of
34 accrued paid sick leave per year.

35 (c) Any employer that offers employees paid leave, other than
36 vacation leave, that may be used for the same purposes and under the
37 same conditions as paid sick leave under this section and section 3 of
38 this act shall be deemed to be in compliance with this section.

39 (d) Nothing in this section shall be construed to prevent employers
40 from providing paid leave that is more generous than that required
41 under this section and section 3 of this act.

42 Sec. 3. (NEW) (*Effective October 1, 2007*) (a) An employer shall permit
43 an employee to use paid sick leave:

44 (1) For (A) an employee's mental or physical illness, injury or health
45 condition, (B) the medical diagnosis, care or treatment of an
46 employee's mental or physical illness, injury or health condition, or (C)
47 preventive medical care for an employee; or

48 (2) Where an employee is a victim of family violence, sexual assault
49 or stalking, (A) for medical care or psychological or other counseling
50 for physical or psychological injury or disability, (B) to obtain services
51 from a victim services organization, (C) to relocate due to such family
52 violence, sexual assault or stalking, or (D) to participate in any civil or
53 criminal proceedings related to or resulting from such family violence,
54 sexual assault or stalking.

55 (b) If an employee's need to use paid sick leave is foreseeable, an
56 employer may require advance notice, not to exceed seven days prior
57 to the date such leave is to begin, of the intention to use such leave. If
58 an employee's need for such leave is not foreseeable, an employer may
59 require an employee to give notice of such intention as soon as
60 practicable. For paid sick leave of three or more consecutive days, an
61 employer may require reasonable documentation that such leave is
62 being taken for the purposes permitted under subsection (a) of this
63 section. If such leave is permitted under subdivision (1) of said
64 subsection, documentation signed by a health care provider who is
65 treating the employee indicating the need for the number of days of
66 such leave shall be considered reasonable documentation. If such leave
67 is permitted under subdivision (2) of said subsection, a court record or
68 documentation signed by an employee or volunteer working for a
69 victim services organization, an attorney, a police officer or other
70 counselor involved with the employee shall be considered reasonable
71 documentation.

72 Sec. 4. (NEW) (*Effective October 1, 2007*) (a) No employer shall take
73 retaliatory personnel action or discriminate against an employee
74 because the employee (1) requests or uses paid sick leave in
75 accordance with sections 2 and 3 of this act, or (2) files a complaint
76 with the Labor Commissioner alleging the employer's violation of

77 sections 2 to 6, inclusive, of this act.

78 (b) Any employer who is found by the Labor Commissioner, by a
79 preponderance of the evidence, to have violated the provisions of
80 sections 2 to 6, inclusive, of this act shall be liable to the Labor
81 Department for a civil penalty of six hundred dollars for each
82 violation. The Labor Commissioner may award the employee all
83 appropriate relief, including rehiring or reinstatement to the
84 employee's previous job, payment of back wages and reestablishment
85 of employee benefits to which the employee otherwise would have
86 been eligible if the employee had not been subject to such retaliatory
87 personnel action or discriminated against. Any party aggrieved by the
88 decision of the commissioner may appeal the decision to the Superior
89 Court in accordance with the provisions of chapter 54 of the general
90 statutes.

91 Sec. 5. (NEW) (*Effective October 1, 2007*) If an employer possesses
92 health information or information pertaining to family violence about
93 an employee, such information shall be confidential and shall not be
94 disclosed except to the affected employee or with the permission of the
95 affected employee.

96 Sec. 6. (NEW) (*Effective October 1, 2007*) Each employer subject to the
97 provisions of section 2 of this act shall, at the time of hiring, provide
98 notice to each employee (1) of the employee's entitlement to sick leave,
99 the amount of sick leave provided and the terms under which sick
100 leave may be used, (2) that retaliation by the employer against the
101 employee for requesting or using sick leave is prohibited, and (3) that
102 the employee has a right to file a complaint with the Labor
103 Commissioner for any violation of sections 2 to 6, inclusive, of this act.
104 Employers may comply with the provisions of this section by
105 displaying a poster in a conspicuous place, accessible to employees, at
106 the employers' place of business that contains the information required
107 by this section in both English and Spanish. The Labor Commissioner
108 may adopt regulations, in accordance with chapter 54 of the general
109 statutes, to establish additional requirements concerning the means by

110 which employers shall provide such notice.

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|---|------------------------|-------------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>October 1, 2007</i> | New section |
| Sec. 2 | <i>October 1, 2007</i> | New section |
| Sec. 3 | <i>October 1, 2007</i> | New section |
| Sec. 4 | <i>October 1, 2007</i> | New section |
| Sec. 5 | <i>October 1, 2007</i> | New section |
| Sec. 6 | <i>October 1, 2007</i> | New section |

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 08 \$ | FY 09 \$ |
|---|----------------------|------------------------|------------------------|
| Labor Dept. | GF - Cost | Potential \$156,000 | Potential \$156,000 |
| Labor Dept. | GF - Revenue Gain | Potential Minimal | Potential Minimal |
| Comptroller Misc. Accounts (Fringe Benefits) | GF - Cost | Potential \$93,860 | Potential \$93,860 |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill could result in a cost to the state of approximately \$250,000. The bill requires private-sector employers with 25 or more employees to provide their employees with paid sick leave. This applies to 9,200 employers in both the public and private sectors and their approximately 1.3 million employees in Connecticut.

Employees may file a complaint with the Department of Labor if their employer violates any of the provisions of Sections 2 to 6 of the bill. This is expected to increase the number of complaints regarding wage and hour information and may require two additional wage investigators (annual salary of \$46,553 each) in the Wage and Workplace Standards Division. Fringe benefits for the new positions would total \$56,050.

Currently, the department reviews approximately 100 cases annually for probable cause hearings regarding the Family Medical Leave Act, resulting in approximately 20 hearings per year. The number of probable cause hearings is expected to increase with the passage of the bill and may require an additional staff attorney (annual salary of \$62,807 and fringe benefits totaling \$37,810).

The Labor Commissioner's decision to reward appropriate relief for a complaint may be appealed in Superior Court. Any administrative appeals under Section 4 of the bill could be accommodated by the Judicial Department and the Office of the Attorney General without requiring additional resources.

The bill could also result in a minimal revenue gain. Employers who violate Sections 2 to 6 of the bill will be liable to the Department of Labor for a civil penalty of \$600 for each violation.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the rate of complaints and violations.

OLR Bill Analysis**sSB 601*****AN ACT MANDATING EMPLOYERS TO PROVIDE PAID SICK LEAVE TO EMPLOYEES.*****SUMMARY:**

This bill requires all employers with 25 or more employees to provide their employees with paid sick leave accruing at a rate of one hour for each 40 hours worked. Once they have been employed for 90 days, employees are eligible to use the time and are entitled to use up to 52 hours of accrued sick leave a year. The leave can be used for an employee's illness, treatment of an illness, diagnosis, and preventive medical care. It can also be used for reasons related to the employee being a victim of family violence, sexual assault, or stalking. Current law does not require employers to provide sick leave, whether paid or unpaid.

The bill bans any employer from taking retaliatory action or discriminating against an employee because the employee requests or uses paid sick leave as provided in the bill.

The bill allows complaints to be filed with the labor commissioner. Employers found in violation of the bill's provisions are liable to the Labor Department for a civil penalty of \$600 for each violation. The labor commissioner may award appropriate relief including rehiring or payment of back wages. Parties may appeal the commissioner's decision to Superior Court.

The commissioner may develop related regulations requiring employers to provide employees with notification of the bill's benefits.

EFFECTIVE DATE: October 1, 2007

PAID SICK LEAVE

This bill requires employers to provide their employees with paid sick leave accruing at a rate of one hour for every 40 hours worked. It defines employer as any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, or any other entity, including public sector employers, that employs 25 or more workers.

Once they have been employed for 90 days, employees are entitled to use the time and can use up to 52 hours of accrued sick leave a year. Each employee is entitled to carry over accrued paid sick leave from one year, whether calendar or fiscal, to succeeding years.

Any employer that offers employees paid leave, other than vacation leave, that can be used for the same purposes and under the same conditions as sick leave under the bill is deemed to be in compliance with the bill. This appears to be an inconsistency as it does not require an employer to provide the same amount of leave as required by the bill in order to be deemed in compliance.

The bill specifies that it does not prevent employers from providing a more generous paid leave policy than the bill requires.

EMPLOYEE DEFINED

Under the bill, employee means anyone engaged in service to an employer in the employer's business who is (1) paid by an hourly rate, or (2) not exempt from the minimum wage and overtime compensation requirements of the federal Fair Labor Standards Act of 1938, as amended. Generally, managers who have authority to hire and fire staff, and professional occupations (such as lawyers and physicians) are exempt from overtime requirements.

PERMITTED USES

Under the bill, an employer must permit an employee to use paid sick leave for the following reasons related to mental or physical illness:

1. an employee's illness, injury, or health condition;

2. the medical diagnosis, care, or treatment of such a condition; or
3. preventive medical care for an employee.

An employer must also allow an employee to use paid sick time when the employee is the victim of family violence, sexual assault, or stalking:

1. for medical care or psychological or other counseling for physical or psychological injury or disability;
2. to obtain services from a victim services organization;
3. to relocate; or
4. to participate in any related civil or criminal legal proceedings.

The bill uses the existing statutory definitions for “family violence,” “sexual assault,” and “stalking.”

PERMITTED EMPLOYEE REQUIREMENTS

The bill permits employers to place certain requirements on employees seeking to use paid sick leave under various circumstances. If the need to use paid sick leave is foreseeable, an employer can require advance notice, not more than seven days before the date the leave is to begin, of the intention to take leave. If the leave is not foreseeable, an employer can require an employee to give notice as soon as feasible.

For leave of three or more consecutive days, an employer can require reasonable documentation that the leave is being taken for the purposes permitted by the bill. Table 1 shows how the bill defines reasonable documentation.

Table 1: Documentation Needed for Sick Leave

| Type of leave | Documentation |
|--------------------|-------------------------|
| Mental or physical | Documentation signed by |

| | |
|--|---|
| illness, treatment of an illness or injury, mental or physical diagnosis, or preventive medical care | the health care provider treating the employee and indicating the need for the number of days of such leave |
| Related to the employee being a victim of family violence, sexual assault, or stalking | A court record or documentation signed by an employee or volunteer working for a victim services organization, an attorney, police officer, or other counselor involved with the employee |

RETALIATION PROHIBITED

The bill bans any employer from taking retaliatory personnel action or discriminating against an employee because the employee (1) requests or uses paid sick leave as provided in the bill or (2) files a complaint with the labor commissioner alleging an employer's violation of the bill.

The bill defines retaliatory personnel action as a termination, suspension, constructive discharge, demotion, unfavorable reassignment, refusal to promote, disciplinary action, or any other adverse employment action taken by an employer against an employee.

PENALTIES

Violators are liable to the Labor Department for a civil penalty of \$600 for each violation. The labor commissioner must find, by a preponderance of the evidence, that the employer violated its provisions. The labor commissioner also may award appropriate relief, including rehiring or reinstatement to the person's previous job, back wages, and reestablishment of employee benefits for which the employee would have been eligible if not for the retaliatory action or discrimination.

Aggrieved parties may appeal the commissioner's decision to Superior Court.

CONFIDENTIAL INFORMATION

The bill requires an employer who possesses health information or information pertaining to family violence about an employee to keep it confidential and not disclose it except to the affected employee or with the employee's permission.

EMPLOYEE NOTICE

Each employer subject to the bill's provisions must provide notice to each employee at the time of hiring that:

1. the employee is entitled to sick leave, the amount of sick leave provided, and the terms under which sick leave may be used;
2. retaliation by the employer against the employee for requesting or using sick leave is prohibited; and
3. the employee has a right to file a complaint with the Labor Commissioner for any violation of the bill.

Employers can comply with this requirement by displaying a poster in a conspicuous place, accessible to employees, at the employers' place of business that contains the required information in English and Spanish. The bill authorizes the labor commissioner to adopt regulations to establish additional notice requirements.

BACKGROUND

Legislative History

The Senate referred the bill (File 220) to the Judiciary Committee, which reported it out with substitute language. The substitute bill increased the number of employees of covered employers from 15 to 25, limited the annual use of paid sick leave to a maximum of 52 hours, added the definition of employee, removed the exemption for public employers, and required that violations be determined by a preponderance of the evidence.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Substitute

Yea 8 Nay 2 (03/15/2007)

Judiciary Committee

Joint Favorable Substitute

Yea 19 Nay 13 (04/27/2007)